



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Giraldo Gonzalez
Miami-Dade Aviation Department

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-49 Contracting with the County, Sections 2-11.1(c), County Ethics Code

DATE: March 23, 2021

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding Miami-Dade County employees applying to become County vendors.

Background:

You are employed with the County as an Airport Lighting Technician for the Miami-Dade Aviation Department. Your duties include troubleshooting, repairing, and maintaining the airfield lighting circuits and components. You ride runways and taxiways at Miami International Airport and general aviation airports inspecting the fields and making any necessary repairs.

J&A Elite Electric (J&A Elite), your privately-owned company, is seeking contract with the County and become a County vendor. J&A Elite is an electrical contracting company, which provides residential remodeling, electrical and lighting installations, troubleshooting, electrical wiring, and various electrical services. As President of J&A Elite, you manage and run the company in addition to performing the work as an electrical contractor. You advise that you would not engage in any work involving aviation electrical work. You also indicate that your work would not require the use of any equipment or resources which you use in your County employment nor would you work with the same clients. Lastly, your work with J&A Elite will be conducted outside your County hours.

Analysis and Opinion:

Your inquiry involves several sections of the Miami-Dade County Ethics Code which are analyzed below:

A. Outside Employment

Work conducted for J&A Elite, your privately-owned business, constitutes outside employment. Sections 2-11.1(j) and (k) of the Miami-Dade County Ethics Code prohibit County employees from engaging in outside employment which would impair the County employee's independence of judgment in the performance of his/her official duties thereby creating a conflict between the employee's public duties and private interests. The County's Administrative Order 7-1 reiterates the general principle that County employees must conduct the public's business without even an appearance of conflicting loyalties: "Under no circumstances shall a County employee accept outside employment...where a real or apparent conflict of interest with one's official or public duties is possible."

Miami-Dade County employees are required to obtain approval from their department directors prior to engaging in outside employment. *See* County's Administrative Order 7-1. Directors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* INQ 19-101; INQ 13-28.

The County's Administrative Order No. 7-1 gives a County department director the ultimate discretion to deny outside employment if he or she finds that it is contrary, detrimental, or adverse to the interest of the County and/or the employee's department. *See* RQO 16-02; RQO 12-07; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

In consideration of your inquiry, we must look to several factors, one of which is whether there is similarity in your duties as an Airport Lighting Technician for the Miami-Dade Aviation Department and your prospective work with J&A Elite. In this instance, both positions require you utilize the same knowledge base involving electrical work; however, there is no indication that a prohibited conflict of interest exists.

The Ethics Commission has previously opined that a similarity between an employee's County duties and his or her outside employment duties does not indicate, *by itself*, the existence of a conflict of interest. *See* INQ 18-54 (citing RQO 00-10; RQO 04-168; RQO 12-07 which note that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations) (emphasis added). Therefore, the similarities in the services you would be providing in the two positions does not preclude you from engaging in outside employment provided any necessary limitations are imposed. Further, the Ethics Commission has also held that use of an acquired knowledge base in outside employment for a privately owned company does not in and of itself create a conflict of interest. *See* INQ 20-43.

Nevertheless, you must abide by certain limitations and cautions outlined below to avoid a conflict:

- You may not use County time or resources in your outside employment. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43.
- You shall not engage in activities that relate in any way to your outside employment during regular business hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers,

computers, fax machines, County vehicles, in connection with your outside employment, even after work). *See* Sections 2-11.1 (j) and (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 05-29, and INQ 15-240.

- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, for the benefit of J&A Elite or for the benefit of J&A Elite clients. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.
- You shall obtain permission to engage in outside employment on an annual basis by completing online a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County's Elections Department by noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

B. Contracting with the County

Once you have been granted permission to engage in outside employment by your department director, you may enter into a County contract through your privately-owned business, J&A Elite, provided that the contract does not interfere with the full and faithful discharge of your duties to the County. *See* Sections 2-11.1(c)(2) and (d), Miami-Dade County Ethics Code.

This includes the condition that you may not participate in determining the contract/workshop requirements or in awarding the contract. Additionally, none of your County job responsibilities and job descriptions may require you to be involved in the contract/workshops in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination, or forbearance. Finally, you may not work in any County department that would enforce, oversee or administer the contract/workshop. *See* Sections 2-11.1(c) and (n), Miami-Dade County Ethics Code. Consequently, J&A Elite **may not** enter contracts with Miami-Dade Aviation Department.

C. Lobbying

Additionally, you may not lobby the County. In this case, it means that you may not contact anyone within the County in an attempt to influence a decision about any contract J&A Elite is seeking. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code.

D. Exploitation of Official Position

Finally, the Miami-Dade County Ethics Code prohibits County employees from exploitation of their official position. This means that you may not use your County position to secure special privileges or exemptions with respect to any County contract to which J&A Elite is applying. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.

Please submit this memorandum to the Procurement Department. The Ethics Commission does not submit it on your behalf.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.